

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 2119 OF 2000  
WITH  
CIVIL APPLICATION NO. 2909 OF 2005

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|----------------------------------------------------------------------------------------------------------------------------|--|-----------------|
| 1. Laxman Mahadeo Chavan<br>Aged about 45 years,<br>Agriculturist.<br>R/at. Panmalewadi, Tal.Satara<br>Dist.Satara         |  |                 |
| 2. Hanmant Mahadeo Chavan<br>Aged about 40 yrs.,Agriculturist<br>& Service, R/at. Panmalewadi,<br>Tal. Satara, Dist.Satara |  |                 |
| 3. Tatyaba Manyaba Chavan,<br>Aged about 75 yrs.Agriculturist<br>R/At. Panmalewadi, Tal.Satara                             |  | .. Petitioners. |

V/s.

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|---------------------------------------------------------------------------------------------|--|-----------------|
| 1. The State of Maharashtra<br>office at Sachivalay, Mumbai-32.                             |  |                 |
| 2. The Land Acquisition Officer<br>No.9, office at Rajawada,<br>Satara, Dist.Satara.        |  |                 |
| 3. The District Resettlement Officer,<br>Collector Bunglow Compound, Satara<br>Dist.Satara. |  | .. Respondents. |

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Mr.Pradeep Gole with H.D.Gole for the Petitioners.

Mr.V.A.Sonpal, AGP for the Respondents Nos. 1 to 3.  
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CORAM : F.I. REBELLO AND  
R.M. SAVANT, JJ.

DATED : 20th JUNE, 2007.

JUDGMENT :- (Per R.M.Savant,J)

. By this petition filed under Article 226 of the

Constitution of India, the petitioners have taken exception to the Notification No. LAQ/SR.177, dated 12.05.1983 issued under Section 4 of the Lands Acquisition Act and the declaration issued under section 6 of the said Act and the subsequent acquisition proceedings in respect of the petitioners land which are being acquired for rehabilitation of the project affected persons. Such of the facts which are necessary to be cited are stated thus :

2. The petitioners are heirs of one Manyaba who died on 17.10.1959, leaving behind him four sons namely, Mahadeo, Nivrutti, Tatyaba and Vithal. After the death of Manyaba, out of the joint family of four sons, eldest son Mahadev was the manager, and the joint family continued from 17.10.1959 to 1976. In 1976, there was oral partition between the four sons and the said partition was supported by carrying out necessary entries in the revenue record.

3. The State Government proceeded to acquire land of the petitioners under the assumption that the family of Manyaba and his four sons were holding more than 4 acres of land though after deducting the area of 2 As and 28 1/2 Gunthas, the holding of the joint family was reduced to 7As and 37 1/2 Gunthas. The Government

issued notification dated 12.05.1983 under section 4 of the Land Acquisition Act, which was published on 22.05.1983, notifying the area of 0H and 70 Rs from out of the petitioners' holding. The petitioners resisted the said acquisition of their joint family land, interalia, on the following grounds :

- i. That the holding of the petitioners joint family was 7As and 37 1/2 Gunthas which was less than 8 Acres, which was a slab prescribed.
- ii. There was a separation of the petitioners joint family in the year 1976 and therefore, the petitioners individual holding was less than 2 acres.

The State Government rejected the said contention of the petitioners. The petitioners were in actual possession of the land under acquisition until the government authorities erroneously prepared the revenue record, showing that the possession of the petitioners land which was under acquisition was taken and the same was in possession of the District Rehabilitation Officer, Satara on the same being handed over by the Special Land Acquisition Officer. The said acquisition proceedings commenced by issuance of section 4 Notification and the

subsequent declaration has been challenged in the instant petition.

4. This petition was admitted on 3.7.2000 by a learned Bench of this court and the parties were directed to maintain status-quo.

5. It is the principal contention on behalf of the petitioners that the said acquisition has been commenced without taking into consideration the facts as mentioned herein above, namely, that there was a partition between the members of the joint family and consequently, the holding of each of the petitioners was below 2 acres. The relevant revenue record evidencing the factum of partition has also not been considered by the authorities concerned. Since the fundamental issue is as to whether the petitioners land could have been acquired for rehabilitation of project affected persons, in the light of the slab of 8 acres being prescribed for the same. Since from the order, it does not ex-facie appear that the respondents have considered the relevant material, we are of the view that the issue as to whether the petitioners land can be acquired is required to be relegated back to the respondent No.2 and 3. The said respondents on such remand would take into consideration material produced by the petitioners in

substantiation of their case that there was a partition and that their holding is less than the slab prescribed and thereafter pass appropriate orders in accordance with law.

6. The petition, therefore, would have to be allowed by issuing the following directions :

i. Issue regarding the acquisition of the petitioners land is remanded back to the Respondent Nos. 2 and 3 for a decision afresh after taking into consideration the material produced by the petitioners in respect of their case of partition and consequently their holding becoming less than the slab prescribed.

ii. The respondent Nos. 2 and 3 to take decision afresh on such remand within three months from date.

iii. The petitioners are granted liberty to produce such documents as they think are relevant for the purpose of substantiating their case.

. Rule is accordingly made absolute in the aforesaid terms with the parties to bear their respective costs.

. In view of what is held hereinabove, the civil Application No.2909 of 2005 does not survive.

(F.I.REBELLO, J.)

(R.M.SAVANT, J.)